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application, to ensure that the new Examiner would have adequate time to review the case and this response. Applicant respectfully requests that Examiner Moore confer with Examiner Banks-Harold regarding any issues with this response to the last Office Action for the parent application. Further, if the Examiner has any questions or concerns about the claims or remarks herein, or otherwise, please do not hesitate to call, in order that we might help expedite the resolution of any such questions or concerns.

REMARKS

In the Office Action for the parent application, dated August 13, 2001, pending claims 1-20 are allowed and pending claims 21-25 are rejected. Claims 21-25 have been rejected under 35 U.S.C. § 251 as being improperly broadened in a reissue application. The Office Action states that the "reissue claims 21-23 are broad or broader than the canceled or amended claim in all respects" and that "the recapture rule bars the claim". The Office Action further states that the "claims 24-25 are broad or broader than the canceled or amended claim in all aspects" and that "the recapture rule bars the claim". Applicant respectfully traverses the rejection of pending claims 21-25.

The present application is a continuation of the reissue Application Serial No. 09/595,557, and this correspondence is in response to the last Office Action issued in the parent application. The parent application to the present continuation application is a reissue application from Application Serial No. 08/876,775, filed on June 16, 1997, which had issued as U.S. Patent No. 5,850,600 on December 15, 1998. Application Serial No.

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08/876,775 is a continuation of Application Serial No. 08/410,901, filed March 27, 1995, which issued as U.S. Patent No. 5,640,674 on June 17, 1997. Application Serial No. 08/410,901 is a continuation of Application Serial No. 07/682,050, filed April 8, 1991, which issued as U.S. Patent No. 5,402,413 on March 28, 1995.

Under 35 U.S.C. § 251, Applicant has properly applied for a reissue patent, which allows, *inter alia*, the applicant to claim more or less than he claimed in the issued patent, U.S. Patent No. 5,850,600, from which this reissue application derives.

The Office Action correctly notes that a reissue will not be granted to recapture claimed subject matter which was surrendered in an application to obtain the original patent. See MPEP § 1412.02. Applicant, however, respectfully traverses the rejection of pending claims 21-25 pursuant to the recapture rule as Applicant is not attempting to recapture subject matter that has been previously surrendered.

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Pending independent claim 21 can be compared with claim 10 in issued U.S. Patent No. 5,540,674. (The present reissue application is from Application Serial No. 08/876,775, which is a continuation of Application Serial No. 08/410,901, which issued as U.S. Patent No. 5,640,674).

Claim 21 of Present Application	Claim 10 of U.S. Patent No. 5,640,674
<p>A multiple user wireless communication system, comprising:</p> <ul style="list-style-type: none"> a plurality of cells; a base station located in each cell; wherein transmitters in a first cell are assigned a first code for modulating radio communication in said first cell; <p>whereby radio signals used in said first cell are spread across a bandwidth sufficiently wide that receivers in a second cell, said second cell being adjacent to said first cell, may distinguish communication which originates in said first cell from communication which originates in said second cell;</p> <p>whereby said first cell using said first code is not adjacent to any other cell using said first code;</p> <p>wherein said base station transmits over a first frequency; and</p> <p>wherein user stations in communication with said base station transmit over a second frequency different from said first frequency.</p>	<p>A multiple user wireless communication system, comprising:</p> <ul style="list-style-type: none"> a repeated pattern of cells; a base station located in each cell; wherein transmitters in a first cell are assigned a first spread spectrum code for modulating radio communication in said first cell; <p>whereby radio signals used in said first cell are spread across a bandwidth sufficiently wide that receivers in a second cell, said second cell being adjacent to said first cell, may distinguish communication which originates in said first cell from communication which originates in said second cell;</p> <p>whereby said first spread spectrum code is reused in a plurality of cells such that said first cell in said pattern using said first spread spectrum code is not adjacent to any other cell using said first spread spectrum code;</p> <p>wherein said base station transmits over a first frequency; and</p> <p>wherein user stations in communication with said base station transmit over a second frequency different from said first frequency.</p>

In a Preliminary Amendment to Application Serial No. 08/410,901, dated March 27, 1995, claim 1 of the parent application was cancelled, and new claims 17-42 were added. Applicant made no statement about any elements of newly added claims 17-42.

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Claim 10 of U.S. Patent No. 5,640,674 is application claim 26, added by this Preliminary Amendment.

In a first Office Action for Application Serial No. 08/410,901, dated May 1, 1996, claims 17-42 were rejected under the judicially created doctrine of non-statutory double patenting over claims 1-17 of U.S. Patent No. 5,402,413. In this same Office Action, the Examiner also stated that “[c]laims 17-42 are allowable over the prior art of record”. On August 30, 1996, Applicant filed a Terminal Disclaimer for Application Serial No. 08/410,901, and on October 2, 1996, a Notice of Allowability for pending claims 17-42 issued for Application Serial No. 08/410,901.

Application claim 26 of Application Serial No. 08/410,901 issued as claim 10 in U.S. Patent No. 5,640,674 without any modifications or amendments, or any surrender of any material, including any material that is now either excluded from or incorporated into independent claim 21 of the pending reissue application. Thus, pending independent claim 21 of the present application is a proper reissue claim, and it does not violate the recapture rule.

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Pending independent claim 23 can be compared with claim 1 in issued U.S. Patent No. 5,850,600, and allowed independent claim 1 in the present application. (The present reissue application is from Application Serial No. 08/876,775, which issued as U.S. Patent No. 5,850,600).

Claim 23 of Present Application	Claim 1 of U.S. Patent No. 5,850,600 and Claim 1 of Present Application
<p>A wireless communication system, comprising:</p> <ul style="list-style-type: none"> a plurality of cells; a base station; and a plurality of user stations; <p>wherein said base station is assigned a first transmission frequency for transmitting to a first cell in said plurality of cells, said first transmission frequency not being assigned to any base station for transmitting to any cell in said plurality of cells adjacent said first cell;</p> <p>wherein said user stations in said first cell are assigned a second transmission frequency, said second transmission frequency not assigned to any user stations in any cell in said plurality of cells adjacent said first cell;</p> <p>wherein said base station and said user stations in said first cell are assigned one or more distinct codes for modulating radio communication for said first cell.</p>	<p>A wireless communication system, comprising:</p> <ul style="list-style-type: none"> a pattern of cells; a base station; and one or more user stations; <p>wherein said base station and said user stations communicate using time division multiple access;</p> <p>wherein said base station is assigned a first transmission frequency for transmitting to a first cell in said pattern of cells, said first transmission frequency not being assigned to any base station for transmitting to any cell in said pattern of cells adjacent to said first cell;</p> <p>wherein each user station in said first cell is assigned a second transmission frequency for transmitting to said base station for the respective first cell, said second transmission frequency not being assigned to any user station in any cell in said pattern of cells adjacent to said first cell.</p>

In a Preliminary Amendment to Application Serial No. 08/876,775, dated September 24, 1997, claim 1 of the grandparent application was cancelled, and new claims 17-36 were added. Applicant made no statement about any elements of newly added

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claims 17-36. Claim 1 of U.S. Patent No. 5,850,600 is application claim 1, added by this Preliminary Amendment.

In a first Office Action for Application Serial No. 08/876,775, dated August 1, 1998, claims 17-36 were rejected under the judicially created doctrine of double patenting over claims 1-26 of U.S. Patent No. 5,640,674. On August 4, 1998, Applicant filed a Terminal Disclaimer for Application Serial No. 08/876,775, and on August 14, 1998, a Notice of Allowability for pending claims 17-36 issued for Application Serial No. 08/876,775.

Application claim 1 of Application Serial No. 08/876,775 issued as claim 1 in U.S. Patent No. 5,850,600 without any modifications or amendments, or without any surrender of any material, including any material that is either excluded from or incorporated into independent claim 23 of the pending reissue application. Thus, pending independent claim 23 of the present application is a proper reissue claim, and it does not violate the recapture rule.

In view of the foregoing, it is believed that independent claims 21 and 23 recite patentable subject matter over the prior art, and are proper reissue claims that do not violate the recapture rule. As such, the respective dependent claims, 22 and 24-25, are also allowable and a Notice of Allowance on all claims is earnestly solicited.

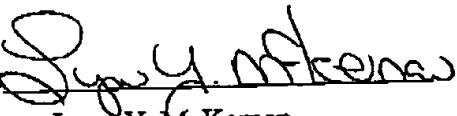
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As previously stated, if the Examiner has any questions or concerns about the claims or remarks herein, or otherwise, please do not hesitate to call, in order that we might help expedite the resolution of any such questions or concerns.

Respectfully submitted,
LYON & LYON

Dated: February 6, 2002

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